

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AVRAM VINETO NIKA,

Petitioner,

v.

WILLIAM GITTERE, *et al.*,

Respondents.

Case No. 3:09-cv-00178-JCM-WGC

ORDER

In this capital habeas corpus action, on June 12, 2019, the Court granted, in part, Avram Vineto Nika's habeas petition, and judgment was entered accordingly. See Order entered June 12, 2019 (ECF No. 186); Judgment (ECF No. 187). The Court granted Nika relief relative to the penalty phase of his trial. See *id.* Nika filed a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e) (ECF No. 189), and the Court granted that motion, in part, and expanded the certificate of appealability. See Order entered October 4, 2019 (ECF No. 200); Amended Judgment (ECF No. 201).

The Court's Amended Judgment stated, in part:

IT IS FURTHER ORDERED AND ADJUDGED that Respondents shall either (1) within 60 days from the date of this order, vacate Petitioner's death sentence and impose upon him a non-capital sentence, consistent with law, or (2) within 60 days from the date of this order, file a notice of the State's intent to grant Petitioner a new penalty-phase trial, and, within 180 days from the date of this order, commence jury selection in the new penalty-phase trial.

* * *

///

///

///

1 IT IS FURTHER ORDERED AND ADJUDGED that the judgment in
2 this action will be stayed pending the conclusion of any appellate or
3 certiorari review in the Ninth Circuit Court of Appeals or the United States
 Supreme Court, or the expiration of the time for seeking such appellate or
 certiorari review, whichever occurs later.

4 Amended Judgment (ECF No. 201).

5 The respondents did not appeal. Nika, however, did appeal the denial of relief on
6 certain of his claims. On September 15, 2022, the Ninth Circuit Court of Appeals
7 affirmed. See Memorandum (ECF No. 206). On December 20, 2022, the Court of
8 Appeals denied panel rehearing and rehearing en banc. See Order entered
9 December 20, 2022 (ECF No. 208).

10 Nika then had until March 20, 2023, to file a petition for writ of certiorari before
11 the United States Supreme Court (see U.S. Sup. Ct. R. 13) but did not file a petition for
12 writ of certiorari.

13 Therefore, the time for Respondents to comply with the judgment began running
14 on March 20, 2023. Respondents then had 60 days—until May 19, 2023—to either
15 vacate Petitioner’s death sentence and impose upon him a non-capital sentence
16 consistent with law or file a notice of the State’s intent to grant Petitioner a new penalty-
17 phase trial. And, Respondents then had 180 days—until September 16, 2023—to
18 commence jury selection in a new penalty-phase trial.

19 On May 16, 2023, the parties filed a stipulation (ECF Nos. 211, 213 (corrected
20 stipulation), 215 (further corrected stipulation)), agreeing to extend by 60 days the time
21 for Respondents to comply with the judgment. The parties stated in that stipulation that
22 they, along with the Washoe County District Attorney’s Office, were in discussions
23 regarding potential resolution of the case, but they required more time to complete
24 those discussions. The Court found that there was good cause for the extension of time
25 requested by the parties and approved the stipulation on May 19, 2023, extending the
26 time for compliance with the amended judgment (ECF No. 216).

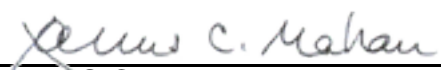
27 On July 18, 2023, the parties filed a stipulation (ECF Nos. 217, 219 (corrected
28 stipulation)) requesting a second extension of the time, of 30 days, for compliance with

1 the judgment. The parties stated in the stipulation that they, and the Washoe County
2 District Attorney's Office, were still in discussions concerning potential resolution of the
3 case and that they required an additional 30 days to complete the discussions. The
4 Court approved that second stipulated extension of time (ECF No. 220). Respondents
5 then had until August 17, 2023, to either vacate Petitioner's death sentence and impose
6 upon him a non-capital sentence consistent with law or file a notice of the State's intent
7 to grant Petitioner a new penalty-phase trial, and the Respondents then had until
8 December 15, 2023, to commence jury selection in a new penalty-phase trial.

9 On August 17, 2023, the parties filed a stipulation (ECF No. 221) requesting a
10 third extension of the time, this time of 120 days, for compliance with the judgment. The
11 parties state in the stipulation that they, along with the Washoe County District
12 Attorney's Office, are still in discussions concerning potential resolution of the case and
13 that counsel has not yet been appointed for Nika for a new penalty phase trial, and that
14 they need more time "[i]n order to provide the prosecution and any future-appointed
15 defense counsel an opportunity to continue negotiations and/or to hold a new
16 sentencing or penalty hearing." Stipulation (ECF No. 221) at 2.

17 **IT IS THEREFORE HEREBY ORDERED** that the stipulation of the parties
18 (ECF No. 221) is **APPROVED**. The time for Respondents to comply with the
19 judgment is extended. Respondents will have until and including **December 15, 2023**,
20 to either vacate Petitioner's death sentence and impose upon him a non-capital
21 sentence consistent with law or file a notice of the State's intent to grant Petitioner a
22 new penalty-phase trial, and the Respondents will have until and including **April 15,**
23 **2024**, to commence jury selection in a new penalty-phase trial.

24
25 DATED August 18, 2023.

26
27 
28 JAMES C. MAHAN
UNITED STATES DISTRICT JUDGE